

# **CONFIDENTIAL**

# **EXHIBIT A**

## HUSCH BLACKWELL

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November 5, 2018

**VIA FEDEX**

Abraxis BioScience, LLC  
ATTN: Mark J. Alles  
Chief Executive Officer, Celgene Corp.  
11755 Wilshire Blvd Ste. 2000  
Los Angeles, California 90025  
Tel. 310.883.1300  
Fax. 310.998.8553

Abraxis BioScience, LLC, a wholly-owned  
subsidiary of Celgene Corporation  
ATTN: Joycelyn Seymour, RAC  
Associate Director, Global Regulatory Affairs  
9225 Indian Creek Parkway, Suite 900  
Overland Park, KS 66210  
Tel.: 903.266.0300

**Re: Notification Pursuant to § 505(b)(3)(B) of the Federal Food, Drug,  
and Cosmetic Act (21 U.S.C. §355(b)(3)(B)) and 21 C.F.R. § 314.50**

Dear Madams/Sirs:

Husch Blackwell LLP represents HBT Labs, Inc. ("HBT"). We write on behalf of HBT to provide notice of the following information to Abraxis BioScience, LLC ("Abraxis"). Abraxis is the holder of approved New Drug Application ("NDA") No. 021660 for the manufacture and sale of "Abraxane® for Injectable Suspension (paclitaxel protein-bound particles for injectable suspension) (albumin-bound)," according to the records of the U.S. Food & Drug Administration ("FDA").<sup>1</sup> According to its current label, that product's approved indications are (1) "Metastatic Breast Cancer"; (2) "Non-Small Cell Lung Cancer"; and (3) "Adenocarcinoma of the Pancreas." Abraxis is the current legal owner of U.S. Patent Nos. 7,758,891 ("891 patent"), 7,820,788 ("788 patent"), 7,923,536 ("536 patent"), 8,034,375 ("375 patent"), 8,138,229 ("229 patent"), 8,268,348 ("348 patent"), 8,314,156 ("156 patent"), 8,853,260 ("260 patent"), 9,101,543 ("543 patent"), 9,393,318 ("318 patent"), 9,511,046 ("046 patent"), and 9,597,409 ("409 patent") according to the assignment records of the U.S. Patent and Trademark Office and representations it has made as a plaintiff in various civil actions. *See, e.g.,* Complaint for Patent

<sup>1</sup> We note that in several lawsuits filed with respect to Abraxane®, Celgene Corp. claims to "hold" NDA No. 021660. *See, e.g.,* Complaint for Patent Infringement, *Abraxis Bioscience, LLC v. Actavis LLC*, No. 16-cv-01925-JMV-MF, at ¶ 13 (D.N.J. Apr. 6, 2016) (ECF 1); Complaint for Patent Infringement, *Abraxis Bioscience, LLC v. Cipla Ltd.*, No. 16-cv-09074-JMV-MF, at ¶ 15 (D.N.J. Dec. 7, 2016) (ECF 1). FDA records indicate that Abraxis Bioscience, LLC is the holder of NDA No. 021660.

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Infringement, *Abraxis Bioscience, LLC v. Actavis LLC*, No. 16-cv-01925-JMV-MF, at ¶¶ 9-12 (D.N.J. Apr. 6, 2016) (ECF 1); Complaint for Patent Infringement, *Abraxis Bioscience, LLC v. Cipla Ltd.*, No. 16-cv-09074-JMV-MF, at ¶¶ 11-14 (D.N.J. Dec. 7, 2016) (ECF 1). The '891 patent, the '788 patent, the '536 patent, the '375 patent, the '229 patent, the '348 patent, the '156 patent, the '260 patent, the '543 patent, the '318 patent, the '046 patent and the '409 patent are collectively referred to herein as the "Listed Patents." The proprietary brand name of the approved reference listed drug is Abraxane®. The FDA first approved Abraxane® on January 7, 2005.

I. Pursuant to 21 U.S.C. § 355(b)(2)(A)(iv), 21 C.F.R. § 314.50(i)(1)(i)(A)(4) and 21 C.F.R. § 314.52(c)(1), we advise you that FDA has received a New Drug Application ("NDA") from HBT for Paclitaxel Protein-Bound Particles for Injectable Suspension (Albumin-Bound), 100 mg/vial. HBT's NDA contains the required bioavailability and/or bioequivalence data submitted by HBT and filed by FDA and/or bioequivalence waiver. The NDA was submitted under 21 U.S.C. §§ 355(b)(2) and contains, or has been amended to contain, paragraph IV certification(s) to obtain approval to engage in the commercial manufacture, use, sale or importation of Paclitaxel Protein-Bound Particles for Injectable Suspension (Albumin-Bound), 100 mg/vial, before the expiration of the Listed Patents, which are listed in *Approved Drug Products with Therapeutic Equivalence Evaluations* (commonly known as the "Orange Book") in connection with NDA No. 021660.

II. Pursuant to 21 C.F.R. § 314.52(c)(2), we advise you that HBT's NDA has been assigned NDA No. 211875 by FDA, and HBT has received the paragraph IV acknowledgement letter from FDA for this NDA.

III. Pursuant to 21 C.F.R. § 314.52(c)(3), we advise you that the established name of the drug product that is the subject of HBT's NDA is Paclitaxel Protein-Bound Particles for Injectable Suspension (Albumin-Bound), 100 mg/vial.

IV. Pursuant to 21 C.F.R. § 314.52(c)(4), we advise you that the active ingredient of HBT's proposed drug product is paclitaxel. The proposed dosage form and dosage strength are Injection, 100 mg/vial.

V. Pursuant to 21 C.F.R. § 314.52(c)(5), we advise you that the patents alleged to be invalid, unenforceable, and/or not infringed in the paragraph IV certification(s) are the Listed Patents, which are listed in the Orange Book in connection with Abraxis's approved NDA No. 021660 for Abraxane® for Injectable Suspension (paclitaxel protein-bound particles for injectable suspension) (albumin-bound). According to information provided to the FDA that is published in the Orange Book, the '260 patent will expire on October 10, 2020, the '536 patent, the '229 patent and the '156 patent will expire on December 9, 2023, the '788 patent will expire on October 27, 2024, the '891 patent, the '348 patent and the '543 patent will expire on February 21, 2026, the '375 patent will expire on August 13, 2026, the '318 patent and the '409 patent will expire on March 4, 2032 and the '046 patent will expire on January 12, 2034.

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be exhaustive. A reasonable opportunity for further investigation and discovery is likely to confirm other grounds of invalidity and/or non-infringement. HBT's investigation continues. HBT reserves the right to assert additional factual and legal bases for invalidity and/or non-infringement of the claims of the '788 patent, the '536 patent, the '229 patent and the '260 patent in any further proceedings.

### IV. THE '891, '375, '156, '348, '543, '318, '046, and '409 PATENTS WILL NOT BE INFRINGED.

The proposed drug product that is the subject of HBT's NDA No. 211875 is intended solely to be used for the treatment of breast cancer. Accordingly, HBT's NDA seeks approval for the treatment of breast cancer as the only indication and use on the product's proposed labeling. Furthermore, the NDA drug product is not intended to be used for the treatment of lung cancer nor the treatment of pancreatic cancer, and the NDA drug product does not include these indications and uses in the proposed labeling as pursuant to 21 C.F.R. § 314.50(i)(1)(iii)(A). As a result, method-of-use claims of the Listed Patents that merely cover the treatment of lung cancer and/or the treatment of pancreatic cancer will not be infringed directly or indirectly by the NDA drug product. Therefore, all claims of the '891 patent, the '375 patent, the '156 patent, the '348 patent, the '543 patent, the '318 patent, the '046 patent, and the '409 patent will not be infringed directly or indirectly.<sup>13</sup>

### V. CONCLUSION

For the reasons set forth above, each claim of the Listed Patents is invalid and/or not infringed by HBT's NDA drug product. Although this letter sets forth sufficient explanation to provide a detailed basis for the certification of HBT's NDA, the analysis and grounds provided are by way of example and not of limitation. Additional, other, and further grounds of invalidity, unenforceability, and/or non-infringement may exist and HBT reserves the right to assert any such additional, other, and further grounds in any litigation, declaratory judgment action, and/or administrative proceeding concerning this NDA and/or the Listed Patents.

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<sup>13</sup> The '891 patent, the '375 patent, the '156 patent, the '348 patent, the '543 patent, the '318 patent, the '046 patent and the '409 patent were not asserted in either *Abraxis Bioscience, LLC v. Actavis LLC*, No. 16-cv-01925-JMV-MF (D.N.J. Apr. 6, 2016) (ECF 1) or *Abraxis Bioscience, LLC v. Cipla Ltd.*, No. 16-cv-09074-JMV-MF (D.N.J. Dec. 7, 2016) (ECF 1), two prior cases involving the submission of Abbreviated New Drug Applications seeking approval to market a generic version of Abraxane®.